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## “Virtual” v.s. “Reality” – On Taxing E-Sports Virtual Goods Transaction in Indonesia

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### Abstract

Unlike traditional sports, e-sports have most of its revenue from the sale of virtual goods (item in-game), which have recently booming and becoming a billion-dollar industry. In 2019, Indonesia contributed 624 million dollars, equivalent to IDR 8.7 trillion for mobile gaming. According to Mirza Adityaswara, Senior Deputy Governor of the Bank of Indonesia (BI), this phenomenon will bring the money out of Indonesia and makes Indonesia's balance of trade (BOT) deficit. Taxing this issue can help the government fulfil yearly tax revenue easily and to resolve her BOT deficit. This paper intends to introduce the current situation of the case a quo in Indonesia and assert how the government imposes a tax upon case aquo. This research is normative legal research. Data collected from books, journals, relevant laws, and regulations. The results show that the government should either revise the current tax law and legal design that are obviously out-of-date and dysfunctional.

**Keywords:** item in-game; online game; sales tax; tax base

### 1. Introduction

Esports (also called electronic sports, or e-sports), better known as online games, which were once overlooked as a hobby, have become a billion-dollar industry.<sup>1</sup> According to Statista's study, in 2017, the esports or online games segment hit more than 731.2 million active users, increasing by nearly 50 million per year.<sup>2</sup> Currently, user penetration reaches 931.7 (12.7%) and is expected to continue growing to 13.8% by 2025.<sup>3</sup> The internet and its widespread use on the smartphone, tablet, and computers are the main reason for this industry's tremendous growth.<sup>4</sup>

The number of mobile gaming in Indonesia expected to increase significantly. In 2019, the mobile game players reached more than 60 million players, and it is expected to

<sup>1</sup> Ahdiyat, A. & Irwansyah, M. (2018). Analisis Keterlibatan Komunitas dalam Industri Permainan Daring di Indonesia (Analysis of Community Involvement in the Online Game Industry in Indonesia). *Jurnal Ilmu Komunikasi*, 8(2), p.105

<sup>2</sup> Forrester, Nick, *Number of Global Online Gamers to Hit 1 billion in 2024*, available at <https://futurefive.co.nz/story/number-of-global-online-gamers-to-hit-1-billion-in-2024> (last visited September 9, 2020)

<sup>3</sup> Statista, *Online Game*, available at <https://www.statista.com/outlook/212/100/online-games/worldwide> (last visited September 9, 2020)

<sup>4</sup> Stehmann, J. M., *Identifying Research Streams in Online Gambling and Gaming Literature: A Bibliometric Analysis*, *Computers in Human Behavior*, Volume 107, June 2020, p. 1

increase to 100 million by 2020.<sup>5</sup> It makes Indonesia ranked 17<sup>th</sup> global with the highest number of active mobile gamers. Indonesia contributed 624 million dollars, equivalent to IDR 8.7 trillion for mobile gaming.<sup>6</sup> In addition, according to the Newzoo report, the game market has a growth of around 9.3% annually and is expected to generate \$159.3 million in 2020.<sup>7</sup>

A recent study found that selling items in-game got a significant revenue stream for the esports industry. As a result, it indicates that 78% of video game players purchased items in-game worldwide.<sup>8</sup> Most Indonesian gamers (94%) have spent money on in-game items or virtual property.<sup>9</sup> According to Senior Deputy Governor of the Bank of Indonesia (BI), Mirza Adityaswara, each of these purchases will bring the money out of Indonesia and makes Indonesia's balance of payments (BOP) deficit.

<sup>5</sup> Maulida, Lely, *Jumlah Gamer di Indonesia Capai 100 Juta di 2020* (The number of Gamer in Indonesia reach 100 Million in 2020), available at <https://www.tek.id/insight/jumlah-gamer-di-indonesia-capai-100-juta-di-2020-b1U7v9c4A> (last visited June 12, 2020)

<sup>6</sup> Selular.id, *Garena: Indonesia Duduki Peringkat ke-17 dengan Jumlah Gamer terbanyak* (Garena: Indonesia ranks 17<sup>th</sup> with the highest number of mobile gamers), available at <https://selular.id/2019/07/garena-indonesia-duduki-peringkat-ke-17-dengan-jumlah-mobile-gamer-terbanyak/> (last visited June 12, 2020)

<sup>7</sup> Wijman, Tom, *the World's 2.7 Billion Gamers will Spend \$159.3 Billion on Games in 2020: The Market Will Surpass \$200 Billion by 2023*, available at <https://newzoo.com/insights/articles/newzoo-games-market-numbers-revenues-and-audience-2020-2023/> (last visited September 16, 2020)

<sup>8</sup> Li, W., Mills, D., & Nower, L., *The Relationship of Loot Box Purchases to Problem Video Gaming and Problem Gambling*, *Addictive Behaviors*, 2019, p. 27

<sup>9</sup> Newzoo, *Insights into the Indonesian Games Market*, available at <https://newzoo.com/insights/infographics/insights-into-the-indonesian-games-market/> (last visited September 23, 2020)

Due to the fact that every esports virtual transaction will affect Indonesia's BOT deficit, taxing this issue can help the government resolve Indonesia's BOT deficit. The existence of taxes is not only a medium to collect funds for the implementation of government activities but also carried out for other purposes, one of which is the role of taxes on the stability of the trade balance.<sup>10</sup> Therefore, this paper intends to introduce the current situation of case aquo in Indonesia and assert how the government imposes a tax upon the case aquo.

## 2. Finding and Analysis

### 2.1. Game Industry in Indonesia

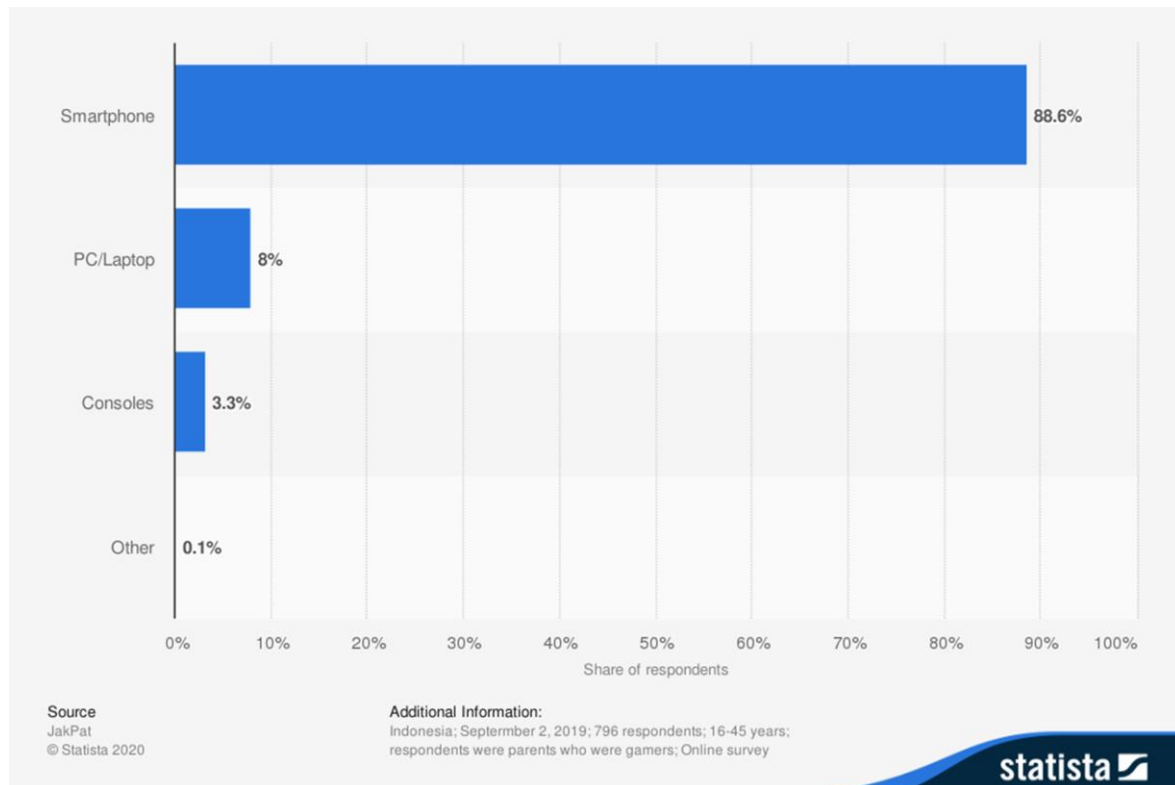
The development of games in Indonesia is quite popular, making games a part of modern society for children and adults alike. The game used to be played offline, with internet games that can be played online with no time constraints. Online games in Indonesia began in the mid-1990s when the Nexian game was released.<sup>11</sup> Along with technology development, the online game in Indonesia appears many types of online games both on the computer and mobile phones such as Dota Online, Entropia Universe, Altantica, Players Unknown Battleground (PUBG), and Mobile Legend. With games online, players can play with an unlimited number of players and also have the opportunity to be meet other players.

<sup>10</sup> Reynaldo Pasaribu, Edwin, *Pajak Ikut Perangi Defisit Neraca Perdagangan* (Taxes Combat Trade Balance Deficit), available at <https://www.pajak.go.id/id/artikel/pajak-ikut-perangi-defisit-neraca-perdagangan> (last visited September 26, 2020)

<sup>11</sup> Fajri, C. (2012). *Tantangan Industri Kreatif-Game Online di Indonesia* (The Challenges to the Creative-Game Industry Online in Indonesia). *Jurnal Komunikasi*, 1(5), p. 444

The development of the game industry in Indonesia is influenced by the number of online games users themselves. In 2006-2010 the game industry experienced a growth of around 30%. There were already 30 million online game users in Indonesia in 2010.<sup>12</sup> The high usage of smartphones in Indonesia<sup>13</sup> increase to 100 million by 2020.<sup>14</sup> It makes Indonesia ranked 17<sup>th</sup> global with the highest number of active mobile gamers. Indonesia contributed 624 million dollars, equivalent to IDR 8.7 trillion for mobile gaming.<sup>15</sup> In terms of revenue management, free-to-play games turn out to be the most profitable online

Figure 1. The most used device used to play games in Indonesia



Source: (<https://www.statista.com/statistics/1064204/indonesia-most-commonly-used-device-used-by-parents-to-play-games/>)

makes mobile gaming became the favorite game (figure 1).

The number of mobile gaming in Indonesia expected to increase significantly. In 2019, mobile game players reached more than 60 million players, and it is expected to

<sup>12</sup> Ibid.

<sup>13</sup> Rahmayani, Indah, *Indonesia Raksasa Teknologi Digital Asia (Indonesia the Big Asia Digital Technology)*, available at [https://kominfo.go.id/content/detail/6095/indonesia-raksasa-teknologi-digital-asia/0/sorotan\\_media](https://kominfo.go.id/content/detail/6095/indonesia-raksasa-teknologi-digital-asia/0/sorotan_media) (last visited June 12, 2020)

<sup>14</sup> Maulida, Lely, *Jumlah Gamer di Indonesia Capai 100 Juta di 2020 (The number of Gamer in Indonesia reach 100 Million in 2020)*, available at <https://www.tek.id/insight/jumlah-gamer-di-indonesia-capai-100-juta-di-2020-b1U7v9c4A> (last visited June 12, 2020)

<sup>15</sup> Selular.id, *Garena: Indonesia Duduki Peringkat ke-17 dengan Jumlah Gamer terbanyak (Garena: Indonesia ranks 17<sup>th</sup> with the highest number of mobile gamers)*, available at <https://selular.id/2019/07/garena-indonesia-duduki-peringkat-ke-17-dengan-jumlah-mobile-gamer-terbanyak/> (last visited June 12, 2020)

game.<sup>16</sup> The online game market is characterized by two styles of business model; subscription-based models and free-to-play models. For access to its game, players playing online games in the subscription-based business model pay the gaming company a monthly fee.<sup>17</sup> The free-to-play game becomes the most frequently played online game in Indonesia in 2020 (figure 2).

In contrast, the game developers will offer games for free to get as many users as possible in contrast to the Free-to-play model. Then they attempt to upsell various items in-game to bear the revenue.<sup>18</sup> Furthermore, it has taken an important role in increasing the revenues of the online game industry.<sup>19</sup> By seeing this potential business, many game developers release their games into a mobile version.

For example, Tencent released the game "PUBG" mobile version called "PUBG Mobile" which rapidly developed into one of the most popular battle royal mobile games in the world. In 2019, their gross revenue past 1.5 billion dollars (around IDR 21 trillion).<sup>20</sup>

<sup>16</sup> Qiao-Chu He, Virtual Items Trade in Online Social Games. *International Journal of Production Economics*, 2017, p. 1

<sup>17</sup> Park, Bong-Won, Chang Lee, Kun, Exploring the value of purchasing online game items, *Computers in Human Behavior*, Volume 27, Issue 6, November 2011, p. 2178

<sup>18</sup> Hamari, J., Alha, K., Jarvela, S., Kivikangas, J., Koivisto, J., & Paavilainen, J. (2017). Why Do Players by In-Game Content? An Empirical Study on Concrete Purchase Motivations. *Computers in Human Behavior*, p. 538

<sup>19</sup> Lee, Jooyoung, Lee, Junyeong, Lee, Heeseok, Lee, Jongwon, an Exploratory Study of Factors Influencing Repurchase Behaviors toward Game Item; A Field Study, *Computers in Human Behavior*, Volume 53, December 2015, p. 13

<sup>20</sup> Sensor Tower, *PUBG Mobile Surges Past \$1.5 Billion in Gross Revenue*, available at <https://sensortower.com/blog/pubg-mobile-revenue-one-point-five-billion> (last visited June 13, 2020)

Unlike other countries, Tencent released a game that is almost the same as PUBG Mobile in China, namely "Game for Peace". Even so, Tencent still grosses fantastic revenues of 614 million dollars.<sup>21</sup> PUBG Mobile has registered 200 million times the number of downloads on its first anniversary, with 30 million active users/players per day.<sup>22</sup>

The number of monthly active players globally continues to increase to 100 million players. Of these, Indonesia is listed as the second-ranked country in the world that has monthly active players.<sup>23</sup> According to Oliver Ye, Marketing Director of PUBG Mobile, PUBG Mobile in Indonesia has succeeded in attracting players in more than 220 cities through various offline tournaments both at amateur, professional and international levels which were watched by more than 23 million viewers.<sup>24</sup> Uniquely, during the COVID-19

<sup>21</sup> Indo Asian News Service, *PUBG Mobile, Game for Peace Global Revenue Exceeds \$1.5 Billion*, available at <https://tech.hindustantimes.com/tech/news/pubg-mobile-game-for-peace-global-revenue-exceeds-1-5-billion-story-1NcXBcViF3bs95iCrIYGjK.html> (last visited June 13, 2020)

<sup>22</sup> Mustofa, Ayyub, *Inilah Fakta dan Data Seputar PUBG Mobile, Setahun Setelah Perilisanannya (These are Facts and Data Regarding PUBG Mobile, a Year after its Release)*, available at <https://hybrid.co.id/post/data-fakta-pubg-mobile-satu-tahun-pertama> (last visited June 19, 2020)

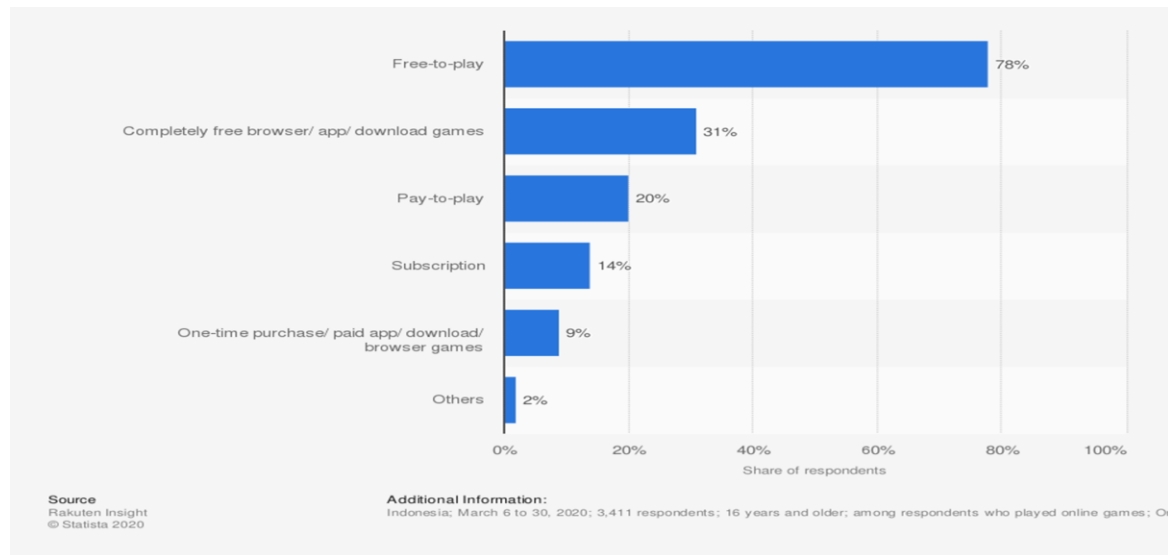
<sup>23</sup> Mutia Annur, Cindy, *Indonesia Peringkat Kedua Pemain Aktif PUBG Terbanyak di Dunia (Indonesia Ranks Second Most Active PUBG Player in the World)*, available at <https://katadata.co.id/berita/2019/05/25/indonesia-peringkat-kedua-pemain-aktif-pubg-terbanyak-di-dunia> (last visited June 19, 2020)

<sup>24</sup> Dennys, Ferril, *PUBG Mobile Tembus 100 Juta Pengguna Aktif, Indonesia di Urutan Kedua (PUBG Mobile Reach 100 Million Active Users, Indonesia Ranks Second)*, available at <https://bola.kompas.com/read/2019/05/25/14193398/pubg-mobile-tembus-100-juta-pengguna->

pandemic, the online mobile gaming industry (including PUBG mobile) has increased rapidly.<sup>25</sup> PUBG mobile revenue extremely increases to 3.5 billion in mid of 2020.<sup>26</sup> Seeing this, the company certainly gets its benefits not from downloading games but also from selling various items in-game.

example, Valve<sup>27</sup> established Steam<sup>28</sup> which has a market for virtual objects in-game organized by Steam. Another company from South Korea "Five Jack"<sup>29</sup> established Itemku, an online marketplace business that focuses on virtual item in-game trading.<sup>30</sup>

Figure 2. Most frequently played online games in Indonesia in 2020



Source: (<https://www.statista.com/statistics/1116568/indonesia-online-games-popularity-by-payment-structure/>)

Many parties are involved in these business activities related to the potential of item in-game (virtual object) transactions. For

## 2.2. Item Game Purchases in Indonesia

Each online game has its virtual currency, as well as PUBG Mobile, its

[aktif-indonesia-di-urutan-kedua](#) (last visited June 19, 2020)

<sup>25</sup> Josina, *Selama Pandemi, PUBG Mobile Raih Pendapatan Terbanyak* (During the Pandemic, PUBG Mobile Received the Most Income), available at <https://inet.detik.com/games-news/d-5119150/selama-pandemi-pubg-mobile-raih-pendapatan-terbanyak> (last visited September 23, 2020)

<sup>26</sup> Rizky Pratama, Kevin, *Game PUBG Mobile Raup Pendapatan Rp 52 Triliun* (PUBG mobile earn IDR 52 Trillion in Revenue), available at <https://tekno.kompas.com/read/2020/09/11/12040087/game-pubg-mobile-raup-pendapatan-rp-52-triliun> (last visited September 20, 2020)

<sup>27</sup> Valve is a company that works in the field of video game development.

<sup>28</sup> Steam is a digital distribution system designed for computers by the Valve company, where customers can buy and download games from the platform directly to their own computers.

<sup>29</sup> Five Jack is a startup company that was founded in 2013, specializes in game-related products and value-added services.

<sup>30</sup> Kaonang, Glenn, *Mengenal Itemku, Online Marketplace yang Berfokus pada Jual-Beli Barang dalam Game* (Get to Know Itemku, an Online Marketplace that Focuses on Item in-game Trading), available <https://dailysocial.id/post/mengenal-itemku-online-marketplace-yang-berfokus-pada-jual-beli-barang-dalam-game> (last visited September 25, 2020)



currency is commonly called Unknown Cash or better known as UC, and the UC is obtained through purchases using real money.<sup>31</sup> Then by using UC, players can purchase items or loot boxes in-game that provide by the developer. A recent study found that selling items in-game got a significant revenue stream for the video game industry. As a result, it indicates that 78% of video game players purchased items in-game worldwide.<sup>32</sup> Mostly of Indonesian gamers (94%) have spent money on in-game items or virtual property.<sup>33</sup>

Item in-game transactions can be categorized into three types: transactions among players; transactions between game developers and players; transactions between dealers and the players.<sup>34</sup> In PUBG mobile, the players found UC on most of all the official e-commerce websites (table 1) in Indonesia even more cheap than other countries.<sup>35</sup> Thus because in-game item purchases have not been subject to Indonesian tax law. This fact is evidenced by the absence of deduction or proof of tax bill attached to the invoice when buying UC on e-

commerce (figure 3) which contradicts article 13 of Value-Added Tax Law.<sup>36</sup> In buying UC directly to developers (figure 4), they usually use Google Pay<sup>37</sup> as a media of payment. In some countries,<sup>38</sup> Google Pay already supports pricing, including taxes, then the price shown to buyers must be the same as the amount paid at the time of payment. Unfortunately, they do not yet support pricing including tax in Indonesia.<sup>39</sup>

Table 1.1 Dealers' UC Sales, June 2020

Store Name	Average Product Sold per Month	Price/600 UC (000)	Total (000)
Savage Store	865	125	108.125
Jualan DLs	4.433	115	509.795
dntStore	1140	98	111.720
TopUp 5menit	8.229	95	781.755
Indo Game StoreNew	4.046	89	360.094

Source: [itemku.com](http://itemku.com)

<sup>31</sup> Sapturo, M. P. E., Ananda, N. A., & Rizqi, R. M. (2019). Perilaku Konsumen dalam Keputusan Pembelian Item pada Game Online PUBG Mobile (Consumer Behavior in Purchasing Decisions on Items at PUBG Mobile Online Games). *Jurnal Manajemen Dan Bisnis*, 2(2), p. 38

<sup>32</sup> Li, W., Mills, D., & Nower, L., The Relationship of Loot Box Purchases to Problem Video Gaming and Problem Gambling, *Addictive Behaviors*, 2019, p. 27

<sup>33</sup> Newzoo, *Insights into the Indonesian Games Market*, available at <https://newzoo.com/insights/infographics/insights-into-the-indonesian-games-market/> (last visited September 23, 2020)

<sup>34</sup> Zhaohui, L., & Xiaomeng, S., The Study of Tax Collection on Online Games' Virtual Properties, *Physics Procedia*, 2012, p. 1275

<sup>35</sup> Anonym, *Harga Top Up UC PUBG Mobile di Berbagai Negara (PUBG Mobile UC Top Up Prices in Various Countries)*, available at <https://esportsku.com/harga-top-up-uc-pubg-mobile/> (last visited September 27, 2020)

<sup>36</sup> Article 13 (1)(a) Taxable Entrepreneur shall be obliged to make Tax invoice for delivery of the Taxable Goods as set forth in Article 4 section (1) point a or point f and/or Article 16D;

<sup>37</sup> Google Pay is the fast, simple way to pay online or make contactless payment with your phone. Your payment info is protected with multiple layers of security so you can pay with peace of mind - all the time.

<sup>38</sup> Australia, Austria, Bahrain, Belarus, Belgium, Brazil, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Ireland, Italy, Israel, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, United Arab Emirates, United Kingdom.

<sup>39</sup> Anonym, *Tax Rates & Value-Added Tax (VAT)*, available at <https://support.google.com/googleplay/android-developer/answer/138000?hl=en-GB> (last visited October 2, 2020)

Figure 3. Invoice of UC purchases on Itemku.com



Source: [itemku.com](http://itemku.com)

Figure 4. UC Sales directly form the developers (in-game)



The need for virtual goods and services led to the idea of some members of the online gaming virtual community to create a marketplace based on an e-Commerce Web Site that sells virtual goods and services.<sup>40</sup> For example, the Itemku have

<sup>40</sup> Ahdiyat, A. & Irwansyah, M. (2018). Analisis Keterlibatan Komunitas dalam Industri Permainan Daring di Indonesia (Analysis of Community

more than a hundred stores and generated millions of rupiahs per month. Since March 2020, their monthly active users have increased by 78%, with the number of new users has increased by 97%.<sup>41</sup> As there are many sales of in-game items, even at very high prices will bring the money out of Indonesia, then it makes Indonesia's balance of trade (BOT) deficit.<sup>42</sup>

According to the Indonesian Game Association (AGI), local developers only get 0.4% of the game market share in Indonesia, which means that 99% of the turnover of money in the Indonesian game market flows to pockets of digital service providers aboard.<sup>43</sup> The existence of taxes is not only a medium to collect funds for the implementation of government activities. More than that, taxation is also carried out for other purposes, one of which is the role of taxes on the stability of the trade balance.<sup>44</sup>

Involvement in the Online Game Industry in Indonesia). *Jurnal Ilmu Komunikasi*, 8(2), p.113

<sup>41</sup> Yusra, Yenny, *Startup Marketplace Produk Virtual "Itemku" Klaim Pertumbuhan Bisnis Selama Pandemi* (Itemku, A Startup of Virtual Product Marketplace Claims Business Growth During Pandemic), available at <https://dailysocial.id/post/startup-marketplace-produk-virtual-itemku-klaim-pertumbuhan-bisnis-selama-pandemi> (last visited October 2, 2020)

<sup>42</sup> Purnama, Yunike, *Neraca Indonesia Defisit, Eks Petinggi BI sebut PUBG cs Jadi Penyebab* (Indonesia's Balance Deficit, Former Deputy of Bank of Indonesia Argued PUBGcs are the Causes), available at <https://kabarsiger.com/read/neraca-indonesia-defisit-eks-petinggi-bi-sebut-pubg-cs-jadi-penyebab> (last visited September 26, 2020)

<sup>43</sup> Damiani, Deo, *Asyiknya Main Game saat Pandemi dan Isu Pajak yang Membayangi* (Fun Playing Games During Pandemic and Looming Tax Issues), available at <https://www.cnbcindonesia.com/opini/20200616120500-14-165697/asyiknya-main-game-saat-pandemi-dan-isu-pajak-yang-membayangi> (last visited October 3, 2020)

<sup>44</sup> Reynaldo Pasaribu, Edwin, *Pajak Ikut Perangi Defisit Negara Perdagangan* (Taxes Combat Trade

Based on the data of table 1, the PUBG's UC transaction reached up to IDR 781 million a month only from one store (TopUp5menit); if calculated by 10% of a tax rate<sup>45</sup>, value-added tax of IDR 78,1 million will be generated theoretically per month.

### 2.3. Government's Respond

Indonesia is a rule of law state.<sup>46</sup> All actions taken by the government must be based on existing legislation.<sup>47</sup> Basically, the government plans to use a 10 percent value-added tax scheme for this issue (digital industry).<sup>48</sup> According to the Minister of Finance, Sri Mulyani, taxation of the digital economy must be carried out immediately. So far, foreign digital business actors have received significant income from Indonesia without paying taxes to Indonesia.<sup>49</sup> According to a member of Commission XI of the House of Representative (DPR), Indah

Balance Deficit), available at <https://www.pajak.go.id/id/artikel/pajak-ikut-perangi-defisit-neraca-perdagangan> (last visited September 26, 2020)

<sup>45</sup> Law No. 42 of 2009 on Value Added Tax on Goods and Service and Sales on Tax Luxury Goods, article 7 (1) Value Added Tax Rate is 10% (ten percent).

<sup>46</sup> Per 1945 Constitution of Republic of Indonesia Article 1 (3) The State of Indonesia is a state based on the rule of law

<sup>47</sup> Satriya, B. (2016). *Membangun Negara Hukum di Era Pemerintahan Presiden Joko Widodo* (Building the State of Law in the Era of President Joko Widodo), *Jurnal Panorama Hukum*, 1(2), p. 45

<sup>48</sup> P. Situmorang, Anggun, *Terungkap, Ini Alasan Kemenkeu Sulit Tarik Pajak Industri Digital* (Revealed, This is the Reason the Ministry of Finance is Difficult to Collect Digital Industry Taxes), available at <https://www.merdeka.com/uang/terungkap-ini-alasan-kemenkeu-sulit-tarik-pajak-industri-digital.html> (last visited October 3, 2020)

<sup>49</sup> Kuniati, Dian, *Sidang MK, Sri Mulyani Ungkap Alasan Pajak Digital Masuk UU 2/2020* (MK Session, Sri Mulyani Reveals Reason for Digital Taxes to include in Law No. 2 of 2020), available at [https://news.ddtc.co.id/sidang-mk-sri-mulyani-ungkap-alasan-pajak-digital-masuk-uu-2-2020-24610?page\\_y=628](https://news.ddtc.co.id/sidang-mk-sri-mulyani-ungkap-alasan-pajak-digital-masuk-uu-2-2020-24610?page_y=628) (last visited October 9, 2020)

Kurnia, the potential value of the digital transaction could reach IDR 100 trillion. If it is subject to 10% VAT, the government could reap around IDR 10 trillion.<sup>50</sup> Unfortunately, without any clear regulation that may cover the issue of item in-game transaction taxation, the government of Indonesia cannot do anything legally.

### 2.4. Indonesian Value Added Tax Law

Indonesia has Law No. 42 of 2009 on Value-Added Tax that governs sales tax matters. Article 3A stipulates that "value-added tax payable on the use of intangible taxable goods/services from outside the customs are must be collected by an individual or entity that utilizes the intangible taxable good/services.<sup>51</sup> But the issue of the ownership of value-added tax was still debatable, is it belongs to the company that is overseas or in Indonesia?<sup>52</sup> Meanwhile, although article 3 of Income Tax Law provides that non-resident taxpayers can be qualified as tax subjects, it also requires the non-resident taxpayers either

<sup>50</sup> Anonym, *Facebook Siap Pungut Pajak 10% Mulai Hari ini, Netflix sejak Agustus* (Facebook Ready to Collect 10% Tax Starting Today, Netflix Since August), available at <https://www.sanyangtaxconsultants.com/2020/50834/facebook-siap-pungut-pajak-10-mulai-hari-ini-netflix-sejak-agustus/> (last visited October 10, 2020)

<sup>51</sup> Article 3A Law No. 42 of 2009 on Value-Added Tax, see [http://www.flevin.com/id/lgso/translations/Laws/Law%20No.%2042%20of%202009%20on%20Tbird%20Amendment%20of%20Law%20No.%208%20of%201983%20on%20the%20Value%20Added%20Tax%20of%20Goods%20and%20Services%20and%20Tax%20of%20Luxury%20Goods%20Sale%20\(MoF\).pdf](http://www.flevin.com/id/lgso/translations/Laws/Law%20No.%2042%20of%202009%20on%20Tbird%20Amendment%20of%20Law%20No.%208%20of%201983%20on%20the%20Value%20Added%20Tax%20of%20Goods%20and%20Services%20and%20Tax%20of%20Luxury%20Goods%20Sale%20(MoF).pdf)

<sup>52</sup> Olivia, Grace, *Indonesia Sulit Pajak Ekonomi Digital, BKF Jelaskan Alasannya* (Indonesia is Difficult to Tax on Digital Economy, BKF Explains the Reason), available at <https://nasional.kontan.co.id/news/indonesia-sulit-pajaki-ekonomi-digital-bkf-jelaskan-alasannya> (last visited October 3, 2020)



“conduct[ing] business or carry[ing] out activities through a permanent establishment, “or “may receive or accrue income from Indonesia other than from conducting business or carrying out activities through a permanent establishment in Indonesia.”

The applicable VAT Law recognizes that every transaction of goods services must be reported by companies that collect to the Director-General of Tax. Likewise, with income tax, the company must report it. However, because these international companies do not have branch offices, reporting becomes an obstacle. Currently, there are some popular online game providers doing business in Indonesia without permanent physical establishment (BUT) in Indonesia, such as Bluehole Inc<sup>53</sup>, Tencent Games<sup>54</sup>, Valve Corporation<sup>55</sup>.<sup>56</sup> Nevertheless, the problem for the government to tax the in-game item purchases lies in the way to collect them. Indonesia adopts a self-assessment system for tax collection in which the amount of tax owed by the taxpayers is self-determined.<sup>57</sup>

<sup>53</sup> Bluehole Inc., is a company base in South Korea and developing PUBG Corporation in Publishing PUBG games.

<sup>54</sup> Tencent Games is a video game company based in China and holds the license for the PUBG mobile game.

<sup>55</sup> Valve Corporation is a computer game developer or publisher company domiciled in the United State.

<sup>56</sup> Ramadhani Putri, Fadiyah, Kebijakan Pemerintah dalam Pengenaan Pajak Penghasilan Pelaku Usaha Asing Game Online (Government Policy in Imposing Online Game Foreign Business Actors), *HUKUM BISNIS*, Volume 4, Number 1, April 2020, p. 261

<sup>57</sup> Law No. 16 of 2000 Article 12 (1) Every Taxpayer shall be obliged to pay tax payable pursuant to the provisions of the tax laws without waiting for the issuance of notice of tax assessment. (2) The amount of tax payable as stated in a Tax Return filed by a Taxpayer is the amount of tax payable pursuant to the provisions of tax laws. See also Imron Rizki A., July 2018, *Self Aseesment Sistem Sebagai Dasar Pemungutan Pajak*

The government is only tasked to provide information and supervision. Thus, the success or failure of the implementation of tax collection is heavily dependent on the honesty of taxpayers. This honesty issue may become the obstacle to impose on the case aquo.<sup>58</sup>

According to Director General of Taxes, Suryo Utomo, the government is trying to bill the omnibus law on taxation, and the government has revised several regulations such as those concerning permanent establishment (BUT). In the omnibus law, the government does not require a physical presence in the form of a branch office in Indonesia but instead refers to a significant economic presence, which means that every company that earns income in Indonesia must pay its tax obligations to the government. The omnibus law covers several issues, including the Income Tax Law (PPH), Value Added Tax (VAT), the General Tax Provision Law (KUP), the Regional Tax and Retribution Law, and the Regional Government Law (Pemda), which related to tax. <sup>59</sup> Unfortunately, the issuance/ the

*di Indonesia (Self-Assessment as a Basis for Tax Collection in Indonesia)*, Kendari: Jurnal Al-'Adl, Volume 11, Issue 2, p. 84-85; Nuramalia Hasanah, Susi Indriani, 2013, *Efektifitas Pelaksanaan Self-Assessment System dan Modernisasi Administrasi Pajak Terhadap Kualitas Pelayanan Pajak (Studi Kasus Pada KPP Kebon Jeruk 1)* (Effectiveness of Self-Assessment system Implementation and Modernization of Tax Administration on Tax Service Quality (Case Study on Kebon Jeruk 1), Semarang: Jurnal Ilmiah Wahana Akutansi, Volume 8, No. 1, p. 17-18

<sup>58</sup> Farouq, M. (2018), *Hukum Pajak di Indonesia, Suatu Pengantar Ilmu Hukum Terapan di Bidang Perpajakan (Tax Law in Indonesia, An Introduction to Applied Legal Studies in the Field of Taxation)*, Jakarta: Prenada Media Group, p. 163

<sup>59</sup> B, Ferio, *Omnibus Law dan Pengaruhnya Terhadap Penerimaan Pajak dan Pertumbuhan Ekonomi (Omnibus Law and Its Effect on Tax Revenue and Economic Growth)*, available at <https://www.pajakku.com/read/5df31695387af773a9e012db/Omnibus-Law-dan-Pengaruhnya>

enactment of the omnibus law on tax has not been confirmed until now.<sup>60</sup>

## 2.5. Minister of Finance Regulation No. 48/PMK.03.2020

Meanwhile, the Centre for Indonesia Taxation Analysis (CITA) considers partnership steps to be the key to facilitating digital tax collection in commerce through the electronic system.<sup>61</sup> In response to this, on 1 July 2020, through the Minister of Finance Regulation (PMK) Number 48/PMK.03/2020 on "Procedures for the Appointment of the Collector, Collection, Remittance, and Filing of Value-Added Tax in the Utilization of Intangible Goods and/or Taxable Services From Outside of the Custom and Excises Territory within the Custom and Excises Territory Through Electronic Commerce", the government officially implemented 10% Value-Added Tax collection from digital game transactions by collaborating with developers.<sup>62</sup> It turns out that the implementation of this policy does not only apply to item in-game purchases but also

affects other digital products such as music streaming, movie streaming, and other online applications.<sup>63</sup>

Since the enactment of this policy, many companies (developers)<sup>64</sup> start to collect VAT on their users, one of which is Valve Corporation (Steam as the platform). In the case of imposing a tax on VAT on item in-game purchases on the steam platform, Indonesia is among the most the latest country.<sup>65</sup> Most countries in Europe have collected taxes with varying amounts<sup>66</sup> from

### Terhadap-Penerimaan-Pajak-dan-Pertumbuhan-Ekonomi (last visited October 9, 2020)

<sup>60</sup> Oktariyanto, Benny, *Omnibus Law Perpajakan untuk Meningkatkan Investasi di Indonesia, Akankah Sesuai Harapan?* (*The Omnibus Law on Taxation to Increase Investment in Indonesia, Will it be as Expected?*), available at <https://nomorsatukaltim.com/2020/08/24/omnibus-law-perpajakan-untuk-meningkatkan-investasi-di-indonesia-akankah-sesuai-harapan/> (last visited October 3, 2020)

<sup>61</sup> Evandio, Akbar, *Pemungutan Pajak Digital, Pendekatan Kemitraan Jadi Kunci* (*Digital Tax Collection, Partnership Approach is the Key*), available at <https://teknologi.bisnis.com/read/20200909/266/1289435/pemungutan-pajak-digital-pendekatan-kemitraan-jadi-kunci> (last visited October 3, 2020)

<sup>62</sup> Fauzi F., Randy, *Beli Game Secara Online Kini akan Dikenakan Pajak Sebesar 10%* (*Buying Games Online Now will be Taxed as Much as 10%*), available at <https://games.grid.id/read/152222123/beli-game-secara-online-kini-akan-dikenakan-pajak-sebesar-10?page=all> (last visited October 5, 2020)

<sup>63</sup> Andika Ferry, *Mulai 1 Juli 2020, Pembelian Top-Up Game Online Akan Dikenakan Pajak!* (*Starting July 1, 2020, Online Game Top-Up Purchases Will be Taxed!*), available at <https://www.indozone.id/game/3esavem/mula-i-1-juli-2020-pembelian-top-up-game-online-akan-dikenakan-pajak/read-all> (last visited October 5, 2020)

<sup>64</sup> Alibaba Cloud (Singapore) Pte Ltd, GitHub, Inc., Microsoft Corporation, Microsoft Regional Sales Pte. Ltd., UCWeb Singapore Pte. Ltd., to the New Pte. Ltd., Coda Payment Pte. Ltd., Nexmo Inc., see DDTCNews, Redaksi, 8 Perusahaan, Termasuk Microsoft, Resmi Ditunjuk Jadi Pemungut PPN (8 Companies, Including Microsoft, Officially Appointed as VAT Collectors), available at <https://news.ddtc.co.id/8-perusahaan-termasuk-microsoft-resmi-ditunjuk-jadi-pemungut-ppn-24614> (last visited October 9, 2020)

<sup>65</sup> Kurniawan, Fikri, *Dipajaki Negara 10% Harga Beli Game di Steam Diklaim Tidak Naik* (*States Taxes 10%, Game Purchases Prices on Steam Claimed Not to Increase*) available at <https://autotekno.sindonews.com/read/91040/207/dipajaki-negara-10-harga-beli-game-di-steam-diklaim-tidak-naik-1593943625?showpage=all> (last visited October 10, 2020)

<sup>66</sup> The United Arab Emirates and Taiwan collect 5 %, Switzerland and Japan 8 %, South Korea and Australia 10 %, South Africa 14%, New Zealand and India 15 %, Serbia 20%, Hungaria collect 27 %, see Chalk, Andy, *Valve Email Reveals Steam Tax Hikes Coming to Ten Countries, More Could be On the Way*, available at <https://www.pcgamer.com/valve-email-reveals-steam-tax-hikes-coming-to-ten-countries-more-could-be-on-the-way/> (last visited October 5, 2020)

this industry since 2015.<sup>67</sup> This tax collection can certainly impact the selling price of games which will be more expensive than usual.

On this regulation, Article 1(6) explains the meaning of digital goods and services that will be subject to collection. The explanation of the product in question is such as movie streaming services, music streaming services, item in-games, applications, credit, and paid video call services.<sup>68</sup> While, article 2 stipulate "VAT shall be imposed on the utilization of intangible Taxable Goods and VAT on digital products is not a new form of tax, but a form of tax treatment to equalize the position between local digital products and foreign digital products."<sup>69</sup>

Article 1(15) stipulates "person conducting e-commerce shall be any individual or entity that carries on e-commerce business activities, consisting of the seller, foreign e-commerce operator, and/or domestic e-commerce operator. For example, Steam, Itemku, Tokopedia, Shopee, etc. They will be determined as VAT

collectors when they have met the criteria for the number of transactions with goods customers, service recipients, and the number of traffics or users in Indonesia over a certain amount within 12 months.<sup>70</sup> But there are limitation criteria as outlined in the Regulation of the Director-General of Taxes No. PER-12/PJ/2020, namely, the number of transactions with the customer in Indonesia exceeds IDR 600 million in a year, or IDR 50 million in a month, and/or the number of accesses in Indonesia exceeds 12,000 a year or 1,000 in a month.<sup>71</sup> In addition, this policy was carried out to implement Article 6 paragraph 13a<sup>72</sup> of Government Regulation in lieu of Law No. 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling COVID-19.<sup>73</sup>

<sup>67</sup> Hastanto, Ikhwan, *Ingat Penggemar Mabur, Beli Game Online Kini Resmi Dikenai Pajak 10 Persen* (Remember Mabur Fans, Buy Online Games Now Officially 10 Percent Taxes), available at <https://www.vice.com/id/article/k7q7vv/pembelian-game-online-di-indonesia-resmi-dikenai-pajak-ppn-10-persen> (last visited October 5, 2020)

<sup>68</sup> Fictor, *Ketentuan dan Perkembangan PPN PMSE* (PMSE VAT Provisions and Developments), available at <https://www.pajakku.com/read/5efeae5271287758223813a/Ketentuan-dan-Perkembangan-PPN-PMSE> (last visited October 10, 2020), see also [https://www.pajak.go.id/sites/default/files/2020-08/Unofficial%20Translation%20-%20PMK%2048%20PMK.03%202020%20%28English%29\\_0.pdf](https://www.pajak.go.id/sites/default/files/2020-08/Unofficial%20Translation%20-%20PMK%2048%20PMK.03%202020%20%28English%29_0.pdf)

<sup>69</sup> Anonym, *Ketahui Peraturan Pajak untuk Produk Digital Luar Negeri – PMK 48/2020* (Learns about Tax Regulation for Foreign Digital Products – PMK 48/2020) available at <https://seller.tokopedia.com/edu/peraturan-pajak-pmk-48/> (last visited October 9, 2020)

<sup>70</sup> Prayoga, Fadel, *Berlaku 1 Juli, Keukeuhnya Pemerintah Tarik Pajak Netflix Cs* (Effect on July 1, Government Will Collect Tax on Netflix Cs), available at <https://economy.okezone.com/read/2020/06/21/20/2233938/berlaku-1-juli-keukeuhnya-pemerintah-tarik-pajak-netflix-cs> (last visited October 13, 2020) see also Article 4(2) of Minister of Finance Regulation No. 48/PMK.03/2020, [https://www.pajak.go.id/sites/default/files/2020-08/Unofficial%20Translation%20-%20PMK%2048%20PMK.03%202020%20%28English%29\\_0.pdf](https://www.pajak.go.id/sites/default/files/2020-08/Unofficial%20Translation%20-%20PMK%2048%20PMK.03%202020%20%28English%29_0.pdf)

<sup>71</sup> Article 4 of the Director General of Taxes Regulation No. PER-12/PJ/2020 see <https://www.pajak.go.id/sites/default/files/2020-08/Unofficial%20Translation%20-%20PER-12%202020%20%28English%29.pdf> (last visited October 13, 2020)

<sup>72</sup> Article 6 paragraph 13a, "Further provision regarding: a procedure for appointment, collection and deposit, as well Value-Added Tax report..." see <https://www.pajak.go.id/sites/default/files/2020-04/Perpu%20Nomor%201%20Tahun%202020.pdf> (last visited October 9, 2020)

<sup>73</sup> Kusma, Hendra, *Catat, Jenis Produk Digital yang Kena Pajak 10% Mulai 1 Juli* (Note, Types of Digital Products Subject to 10% Tax Starting July 1), available at <https://finance.detik.com/berita->

The government assesses that the withdrawal of VAT on types of digital goods and services is an effort to fulfill the financing needed by the government to tackle the impact of COVID-19. Currently, the fiscal deficit widened to 6.34% or equivalent to IDR 1,039.2 trillion of gross domestic product (GDP).<sup>74</sup> There are several considerations to implement this policy. First, it must be admitted that digital business has not been significantly affected and tends to experience a positive trend since Covid-19. Second, tax revenue from VAT has a good projection in the midst of economic shock.<sup>75</sup> This is in line with the OECD analysis, where the implicit VAT rate has decreased due to a shift in public consumption patterns during the crisis. However, the proportion of VAT to GDP can still grow positively. VAT is relatively stable even though the economic performance is decreasing. Thus, implementing a digital business tax policy in the pandemic era can be one strategy to boost state revenue.<sup>76</sup>

### 3. Conclusion

[ekonomi-bisnis/d-5032739/catat-jenis-produk-digital-yang-kena-pajak-10-mulai-1-juli](https://ekonomi-bisnis/d-5032739/catat-jenis-produk-digital-yang-kena-pajak-10-mulai-1-juli) (last visited October 9, 2020)

<sup>74</sup> Kusuma, Hendra, *DPR Sebut Potensi Pajak Netflix cs Sampai Rp. 10 Triliun (DPR considered Netflix cs Up Potential Tax IDR 10 trillion)*, available at <https://finance.detik.com/berita-ekonomi-bisnis/d-5048298/dpr-sebut-potensi-pajak-netflix-cs-capai-rp-10-triliun> (last visited October 13, 2020)

<sup>75</sup> Fiana Indah P., Sevty, *Strategi Bijak Pajak Bisnis Digital (Wise Strategy to Tax Digital Business)*, available at <https://news.detik.com/kolom/d-5046068/strategi-bijak-pajak-bisnis-digital> (last visited October 13, 2020)

<sup>76</sup> Simon, Hannah, Harding, Michelle, *what Drives Consumption Tax Revenue? Disentangling Policy and Macroeconomic Drivers*, *OECD Taxation Working Papers No. 7*, 2020, p. 22-30, see <https://www.oecd-ilibrary.org/docserver/94ed8187-en.pdf?expires=1602552756&id=id&accname=guest&checksum=0669454820C29298E3B09E34A7BA35F1> (last visited October 13, 2020)

Due to the fact that every esports virtual transaction will affect Indonesia's BOT deficit, taxing this issue can help the government resolve Indonesia's BOT deficit. The existence of taxes is not only a medium to collect funds for the implementation of government activities but also carried out for other purposes, one of which is the role of taxes on the stability of the trade balance.

Indonesia has Law No. 42 of 2009 on Value-Added Tax that governs sales tax matters. Meanwhile, with the development of technology, the government faces obstacles to tax the item in-game transaction. It lies in the way to collect it since the online game providers have no physical a permanent establishment (BUT) in Indonesia. Moreover, in light of justice of taxation and policing tax avoidance/evasion, the government must collect tax from this new industry.

On 1 July 2020, the government enacted new regulation (Minister of Finance Regulations No. 48/PMK.03/2020) to tax every digital product transaction, including esports virtual transactions. By enacting this regulation, every item in-game transaction will affect 10% of VAT. Even though Indonesia is a bit late to tax a case aquo, this policy is expected to resolve Indonesia's BOT deficit.

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